

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1100 of 1997

with

CIVIL REVISION APPLICATION No 1101 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No

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BALVANTRAI BABUBHAI JADAV

Versus

KASHINATH JATASHANKER SHUKLA

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Appearance:

1. Civil Revision Application No. 1100 of 1997  
MR DU SHAH for Petitioner  
MR YS LAKHANI for Respondent No. 1
2. Civil Revision Application No 1101 of 1997  
MR DU SHAH for Petitioner  
MR YS LAKHANI for Respondent No. 1

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 04/03/98

## ORAL JUDGEMENT

Both the revision applications arise out of the order dated 4.8.1997 passed by the learned 9th Civil Judge (S.D.), Rajkot in Special Civil Darkhast No. 153 of 1996. By the said order the learned judge has rejected the application of the petitioners judgement-debtors Exh. 19 and 20.

Brief facts giving rise to the petition are that a suit for specific performance came to be decreed by judgement dated 28.12.1994. It appears that appeal was filed against the said judgement before this court which was registered as First Appeal No. 2264 of 1996. The said appeal was rejected by the order of this court on 10.5.1996.

In execution of the decree sale deed was executed on 5.5.1995 and the court issued warrant of possession.

It is contended by learned counsel Mr. Shah that in absence of any prayer in the suit with respect to the possession, no warrant for possession can be issued. He has invited my attention to Section 22 of the Specific Relief Act. The bar provided under Section 22(2) is qualified by word "appropriate cases". An appropriate case mean a case in which any decree for specific performance of the agreement of sale. If such a relief is ancillary flow from the decree of specific performance then it is not necessary to specifically seek such relief and bar of Section 22(2) would not be attracted. I am fortified in my view by decision of the Bombay High Court in the case of LOTU BANDU SONAVANE VS. PUNDALIK NIMBA KOLI reported in AIR 1985 Bombay 412 and also decision of Kerala High Court in the case of NARAYANA PILLAI VS. P.C. SUBBALEKSHMI AMMAL reported AIR 1978 Kerala 236. In view of this, I find no merit in Civil Revision Application No. 1100 of 1997.

So far as the revision application No. 1101 of 1997 is concerned, it is contended that the petitioner No. 1 Rajendra Babubhai Jadav is co-parcener in the property and his obstruction application should not have been rejected only on the ground that he was not a party to the suit. The learned counsel has placed reliance on the judgement of the apex court in BABULAL VS. RAJ KUMAR AIR reported in AIR 1996 SC 2050. A reading of the order shows that the application has not been rejected only on that ground. On merit, the plea of joint Hindu Family property has been rejected. In first appeal, this court held that the plea of H.U.F. is dishonest. In view of this, there was nothing more to be investigated. Thus, there is no merit in this revision application as well.

In view of the aforesaid, both the revisions applications are rejected. Rule is discharged in each case. Interim relief is vacated in each case.

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